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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,515	03/21/2007	Michael F O'Rourke	000877/0002	1448
26753 7590 04/14/2009 ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			EXAMINER MALLARI, PATRICIA C	
			ART UNIT 3735	PAPER NUMBER
			MAIL DATE 04/14/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/583,515	<b>Applicant(s)</b> O'ROURKE, MICHAEL F	
	<b>Examiner</b> PATRICIA C. MALLARI	<b>Art Unit</b> 3735	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 and 7-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 9-15 is/are rejected.
- 7) ☒ Claim(s) 7, 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/19/08</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This is a non-final Office action. Due to changes in guidelines on 35 U.S.C. 101, the instruction given in the previous Office action on how to correct the claim in order to claim a statutory process is no longer valid. See below for details.

#### ***Information Disclosure Statement***

The information disclosure statement filed 12/19/08 has been considered.

#### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-4 and 9-15 are rejected under 35 USC 101 as being directed to non-statutory subject matter because these are method or process claims that do not transform underlying subject matter (such as an article or materials) to a different state or thing, nor are they tied to another statutory class (such as a particular machine). See *Diamond v. Diehr*, 450 U.S. 175, 184 (1981) (quoting *Benson*, 409 U.S. at 70); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978) (citing *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)). See also *In re Comiskey*, 499 F.3d 1365, 1376 (Fed. Cir. 2007) (request for rehearing *en banc* pending). The claims fail to tie a particular machine or apparatus to a significant step of the method or to transform a particular article to a different state or thing. It is noted that language was added to insert a particular machine or apparatus in a step of data gathering. However, data gathering or outputting is an insignificant step,

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and the recitation of a specific machine in such a step is not sufficient to define a process that is patent-eligible. This rejection may be overcome by positively reciting the particular machine or apparatus used to locate the wave foot in the upper limb pressure waveform and to determine the corresponding pressure at time  $t$  after the wave foot in claim 1 and by positively reciting the particular machine or apparatus used to locate a time of the start of a component of the upper limb pressure and to use a value of the upper limb pressure waveform at said time to determine the central systolic pressure in claim 2.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 9-12, 14, and 15 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 9 and 10 recite “measured using applanation tonometry”. The originally filed specification lacks description of the radial pressure waveform being measured using applanation tonometry, as claimed.

Claims 11 and 12 recite, "brachial pressure waveform measured with a brachial cuff". The originally filed specification lacks description of the upper limb pressure waveform being a brachial pressure waveform measured with a brachial cuff, as claimed.

Claims 14 and 15 recites, "limiting the search for the time of the start of a component of the upper limb pressure waveform attributable to the lower body wave reflection to a portion of the waveform after a first preselected length of time after the initial wave foot for the waveform". The originally filed specification lacks description of such a limitation. While the specification discloses specific time periods to which the search is limited on page 5, the specification lacks the time period being any preselected length of time other than that disclosed on page 5 of the specification. Therefore, the specification lacks description of the time period for the search being limited to merely "after a first preselected length of time after the initial wave foot for the waveform" as claimed.

***Allowable Subject Matter***

Due to the multiple rejections under 35 U.S.C. 101 and 35 U.S.C. 112, 1st paragraph, no statement of allowability is being given at this time with regard to claims 1-4 and 9-15, although no prior art rejection has been made. Upon resolution of these issues, the prior art will be revisited. A statement of the differences between the claimed invention and the prior art of record was made in the previous Office action filed 9/22/08.

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Claims 7 and 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. A statement of the difference between the claimed invention and the prior art of record was made in the previous Office action filed 9/22/08.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PATRICIA C. MALLARI whose telephone number is (571)272-4729. The examiner can normally be reached on Monday-Friday 10:00 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/  
Primary Examiner, Art Unit 3735